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**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA- WESTERN DIVISION**

Case No. : 2:14-cv-02571-PA-PJW

Assigned to The Honorable: Judge Percy
Anderson

NOEMI PENALOZA, an individual,

Plaintiff,

vs.

SELECT PORTFOLIO SERVICING,
INC.; JP MORGAN CHASE BANK,
N.A.; and DOES 1 through 50, inclusive,

Defendant.

**SECOND AMENDED COMPLAINT
FOR:**

- 1. PREDATORY LENDING &
OTHER LENDING VIOLATIONS**
- 2. VIOLATION OF CALIFORNIA
CIVIL CODE §2924f**
- 3. UNFAIR, FRAUDULENT
BUSINESS PRACTICE**
- 4. BREACH OF CONTRACT**
- 5. QUIET TITLE**
- 6. VIOLATION OF RESPA**
- 7. VIOLATION OF CALIFORNIA
CIVIL CODE §2923.6(c)**
- 8. VIOLATION OF CALIFORNIA
CIVIL CODE §2924.10(a)**
- 9. VIOLATION OF CALIFORNIA
CIVIL CODE §2924(a)(5)**

DEMAND FOR JURY TRIAL

Plaintiff NOEMI PENALOZA (hereinafter referred to as "Plaintiff"), for her First Amended Complaint against, defendants, alleges as follows:

PARTIES

1
2 1. Plaintiff **NOEMI PENALOZA** (hereinafter referred to as "Plaintiff") is, and at
3 all times material herein has been, an individual residing in the County of Los Angeles,
4 State of California.

5 2. Defendant **SELECT PORTFOLIO SERVICING, INC** (hereinafter referred
6 to as "**SPS**"), is a limited liability corporation doing business in and at all times herein
7 mentioned authorized to do business in the State of California. **SPS** is the purported
8 current servicer of the loan.

9 3. Defendant **JP MORGAN CHASE BANK, N.A.** (hereinafter referred to as
10 "**CHASE**"), is a national association doing business in and at all times herein mentioned
11 authorized to do business in the State of California. **CHASE** is the purported former
12 servicer of the loan.

13 4. The true names and capacities, whether individual, associate, corporate or
14 otherwise of the defendants named herein as Does 1 through 50, inclusive, are unknown
15 to Plaintiff, who therefore sue these defendants, and each of them, by fictitious names.
16 Plaintiff will seek leave of court to amend their complaint to state the true names of Does
17 1 through 50 when ascertained. Plaintiff are informed, and on that basis allege that each
18 defendant, including each defendant designated as a Does, is responsible for the alleged
19 wrongful conduct and a party against whom equitable relief is appropriate. Plaintiff are
20 informed, and on that basis allege, that each defendant is and/or was an agent, servant,
21 coconspirator, affiliate and/or employee of each of the other defendants, and in doing the
22 things alleged herein was acting within the course and scope of said agency, conspiracy
23 and/or employment. Each defendant, including Does 1 through 50, will be collectively
24 referred to hereinafter as "Defendants."

25 5. Plaintiff is informed, and believes, and thereon alleges that each Defendant,
26 including Does, was and is the agent, employee, servant, subsidiary, partner, member,
27 associate, or representative of each other Defendants, including Does, and all of the
28 things alleged to have been done by the Defendants were done in the course and scope of
the agency, employment, service, subsidiary relationship, partnership, membership,
association, or representative relationship, and with the knowledge and consent of their

1 respective principals, employers, masters, parent corporations, partners, members,
2 associates, or representatives.

3 JURISDICTION

4 6. Pursuant to the California Code of Civil Procedure §395.5

5 *“A corporation or association may be sued in the county where the*
6 *contract is made or is to be performed, or where the obligation or*
7 *liability arises, or the breach occurs; or in the county where the*
8 *principal place of business of such corporation is situated, subject to*
9 *the power of the court to change the place of trial as in other cases.”*

10 7. This Court has personal jurisdiction over Defendants because the contract was
11 formed in Los Angeles County.

12 8. This Court has subject matter jurisdiction over this case because this is an
13 unlimited civil case, given the amount in controversy greatly exceeds \$25,000, exclusive
14 of costs and interest, and these causes of action do not arise under federal law.

14 VENUE

15 9. Venue is proper in Los Angeles County, California, because the real property
16 that is the subject matter of the claims in this action is located within Los Angeles
17 County; the Plaintiff and all Defendants reside in the County of Los Angeles; and the
18 events giving rise to the claims made herein occurred in the County of Los Angeles.

19 GENERAL ALLEGATIONS

20 10. On or about February 15, 2007, Plaintiff executed a Deed of Trust and Note
21 with American Mortgage Network Inc. (hereinafter referred to as “AMN”) for a loan of
22 \$568,000.00.

23 11. On or about February 26, 2007, Plaintiff purchased that certain parcel of real
24 property with the legal address: 11332 Youngworth St., Culver City, CA 90230 for
25 \$710,000.00. The legal description of the property is as follows: “LOT 235 OF TRACT
26 NO. 9733, IN THE CITY OF LOS ANGELES, COUNTY OF LOS ANGELES, STATE
27 OF CALIFORNIA. AS PER MAP RECORDED IN BOOK 142 PAGES 69 TO 72
28 INCLUSIVE OF MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID
COUNTY.”

1 12. On or about June 14, 2011, a Notice of Default and Election to Sell under Deed
2 of Trust was recorded. The recording was requested by California Reconveyance
3 Company (hereinafter referred to as "CRC") it was mailed to CRC. Attached was a
4 declaration of compliance executed by Clement J. Durkins of **CHASE**, which stated they
5 purportedly tried with due diligence to contact the borrower.

6 13. In or about the end of 2011 or the beginning of 2012, Plaintiff encountered
7 financial difficulties, so she began seeking foreclosure alternatives. She contacted
8 someone to assist her with her home. This person began a short sale for her when she
9 actually wanted a modification.

10 14. On or about July 25, 2012, a Notice of Default and Election to Sell under Deed
11 of Trust was recorded. The recording was requested by CRC it was mailed to CRC.
12 Attached was a declaration of compliance executed by Siden Sou, Operation Senior
13 Specialist, of **CHASE**, which stated they purportedly tried with due diligence to contact
14 the borrower

15 15. On or about October 2, 2012, Chase sent a letter to inform Plaintiff that she had
16 been approved for a short sale. Per the agreement, Chase would accept a minimum of
17 \$402,172.42 as full and final satisfaction of the Plaintiff's loan, the contract sale price
18 was \$475,000, and Chase needed to receive payment on or before October 19, 2012 or
19 else to the offer would be null and void.

20 16. On or about October 24, 2012, Plaintiff submitted a loan modification to
21 CHASE. Plaintiff never received a notice of acknowledgement of receipt, request for
22 additional documents, or a letter of decision.

23 17. On or about October 30, 2012, Plaintiff received a letter from Bryan Miller at
24 Chase denying the short sale request because "the offer that we have on file is no longer
25 valid."

26 18. On or about November 12, 2012, Plaintiff submitted a complete loan
27 modification application to Chase for the HAMP Program.

28 19. On or about November 14, 2012, Michael Johnson sent a qualified written
request to Chase requesting information about the loan and stating the following: the loan
terms were misrepresented at the time of application, the income was inflated, the

1 appraisal was falsely inflated, signatures were forged, a notary was not present to witness
2 Plaintiff's signature, in addition to other concerns. This request was made pursuant to
3 Dodd-Frank Act in 2010, 15 U.S.C. 1641(f)(2), and 12 U.S.C. §2605(k)(1)(D).

4 20. In November or December of 2012, Michael Johnson sent a letter to Chase
5 informing it that it had violated California Civil Code 2924f, 2924g, and 2924h because
6 Plaintiff "was not served property with trustee sales information 20 days prior to the
7 foreclosure auction date. [t]he letter posted to the door of the residence was posted after
8 the 20 day period required by the law."

9 21. On or about November 16, 2012, a Notice of Trustee Sale was recorded. The
10 recording was requested by CRC and it was mailed to CRC. The trustee sale number was
11 257178CA. The sale was scheduled for 12/07/12 at 11:00 am this was placed on
12 Plaintiff's door on the day of the sale.

13 22. On or about November 24, 2012, Michael Johnson submitted a qualified written
14 request to Chase.

15 23. On or about November 26, 2012, Chase acknowledged receipt of
16 correspondence pertaining to Consumer Care Law Group's representation of Plaintiff.

17 24. On or about November 27, 2012, Chase sent Consumer Care Law Group a form
18 regarding its representation and its authorization from Plaintiff.

19 25. On or about December 4, 2012, Michael Johnson received a response to the
20 qualified written request he submitted on November 24, 2012.

21 26. On or about December 4, 2012, Defendant sent Plaintiff a letter that her house
22 was scheduled to be foreclosed on January 9, 2013.

23 27. On or about December 5, 2012, Consumer Law Group submitted the form
24 Chase sent on November 27, 2012.

25 28. On or about January 4, 2013, Michael Johnson and/or his representatives were
26 informed David that the LOA they submitted did not post correctly into Chase's system
27 and that the David would upload it correctly and they could call back in 24 hours to
28 receive an update on the status of the loan modification.

29. On or about January 9, 2013, Plaintiff received a Notice of Postponement of the
Trustee Sale. The sale was postponed until 02/11/2013.

1 30. On or about January 24, 2013, Plaintiff received a Notice of Postponement of
2 the Trustee Sale. The sale was postponed until 03/07/2013.

3 31. On or about January 26, 2013, Plaintiff received a letter that her foreclosure sale
4 was rescheduled for 03/13/2013.

5 32. On or about February 1, 2013, Plaintiff submitted a hardship letter to Chase as
6 requested.

7 33. On or about March 7, 2013, Plaintiff received a letter from Consumer Law
8 Group informing her that her date of sale had been postponed until 03/20/2013. She did
9 not receive any notice about this postponement from Defendants.

10 34. On or about March 15, 2013, Plaintiff received a Notice of Postponement of the
11 Trustee Sale. The sale was postponed until 04/22/2013.

12 35. On or about March 25, 2013, Plaintiff submitted an application for a loan
13 modification through Consumer Law Group with representatives Iris Marroquin and
14 Michael W. Johnson.

15 36. On or about March 27, 2013, Plaintiff submitted a letter of authorization to
16 Chase along with additional documents requested including a 4056-T.

17 37. On or about April 16, 2013, Iris, of Consumer Care Law Group, contacted
18 Chase and left a voicemail for the specific of contact, Smith. This call was not returned.

19 38. On or about April 17, 2013, Iris contacted Chase and spoke to Denise, who
20 stated the file was under review and there were no additional documents needed.

21 39. On or about April 26, 2013, Plaintiff and/or Liz Gomez, of Consumer Law
22 Care, contacted the bank and was informed that no additional documents were needed at
23 this time.

24 40. On or about May 3, 2013, Plaintiff was informed she was denied due to an
25 alleged failure to submit a complete package because the 4506-T was missing; however,
26 this document was submitted on March 27, 2013. Plaintiff's representative was informed
27 that the file had been rejected as of April 12, 2013. However, when Plaintiff's
28 representative Liz Gomez contacted the bank the week on the 16th of April there were not
any missing documents. She was informed that new package must be submitted.

41. On or about, May 6, 2013, Jessica Angel of Consumer Care Law Group faxed

1 over a complete new loan modification application as requested.

2 42. On May 17, 2013, Michael Johnson and /or his representatives called Smith, to
3 receive an update on the loan modification application. Smith stated she could not speak
4 to them, but would not state why and terminated the call.

5 43. On or about May 20, 2013, Michael Johnson and/or his representatives called
6 and left a voicemail for Smith to receive an update on the modification. This call was
7 never returned.

8 44. On or about May 20, 2013, they then contacted Michelle Diggs, Smith's
9 supervisor and who also stated they could not speak to them.

10 45. On or about May 21, 2013, Michael Johnson and/or his representatives spoke
11 with Jamie Incarnacion, who again stated she could not discuss the file.

12 46. On or about May 21, 2013, Michael Johnson and/or his representatives spoke
13 with Tina May in the Executive Offices, in attempt to receive the information. They also
14 spoke to Lori Meyers, Brenda Smith (the supervisor of Lori Meyers), Ariel Rashana
15 Brown, and Haley Bokership. See *Exhibit 8*: Letter to Chase re: failure to communicate.

16 47. On or about May 22, 2013, Michael Johnson of Consumer Law Group faxed a
17 letter to Chase informing them that they attempted to contact Smith, several times. and
18 May 20. They enclosed their letter of authorization with the letter, although this was
19 previously submitted to Chase on March 27, 2013.

20 48. On or about May 27, 2013, Plaintiff submitted an application for a loan
21 modification through Consumer Law Group.

22 49. On or about May 31, 2013, Plaintiff received a letter acknowledging receipt of
23 her inquiry about her loan from Chase.

24 50. On or about June 5, 2013, Plaintiff received a letter that Chase had received her
25 request for a modification; it had completed two reviews, and determined that she is not
26 eligible for HAMP or any other modification program.

27 51. On or about June 25, 2013, Plaintiff received an acknowledgement of receipt of
28 her HAMP modification application.

52. On or about June 26, 2013, Plaintiff received a letter that stated her Customer
Assistance Specialist ("Specific Point of Contact" hereinafter "SPOC") would be Roslyn

1 Austin-Glover.

2 53. On or about July 17, 2013, Plaintiff became informed that her loan would be
3 transferring from CHASE to SPS effective August 01, 2013.

4 54. On or about August 19, 2013, Plaintiff submitted documents to SPS to be
5 considered for a loan modification. Plaintiff never received a notice of acknowledgement
6 of receipt, request for additional documents (except on September 18th), or a letter of
7 decision

8 55. On or about September 18, 2013, Lea, representative of SPS, requested
9 additional documents for Plaintiff's review. She requested a property insurance statement
10 and a tax insurance statement. Plaintiff is informed and believes that all documents
11 requested were promptly submitted.

12 56. On or about September 18, 2013, Iris contacted John of SPS to confirm receipt
13 of the letter of authorization and discuss the financial interview that was needed to
14 proceed with the loan modification request.

15 57. On or about October 9, 2013, Plaintiff's representative spoke with Jaclyn of
16 SPS to discuss the financials; however the call was dropped prior to the completion of
17 their call. Plaintiff's representative then called back that same day and spoke with
18 Paniyuy who stated Plaintiff was eligible for the HAMP \$1000 incentive for on time
19 payments.

20 58. On or about November 14, 2013, SPS sent Plaintiff a denial letter for failure to
21 turn in documents. However, all documents were timely sent to SPS. This was a bad faith
22 denial. Plaintiff alleges she timely appealed the denial and submitted all requested
23 documents.

24 59. On or about February 12, 2014, a Notice of Trustee Sale was recorded. The
25 recording was requested by ALAW and it was mailed to ALAW. The trustee sale number
26 is 257178CA. The sale was scheduled for 2/12/14 at 11:00 am.

27 60. On or about February 18, 2014, Plaintiff retained Stephen R. Golden &
28 Associates ("SRG").

61. On or about February 18, 2014, representatives from SRG faxed to SPS a letter
of authorization.

62. On or about March 3, 2014, the letter of authorization was resubmitted to SPS in addition to a qualified written request.

63. On or about, March 5, 2014, a complete first lien loan modification application was submitted to SPS by SRG.

64. On or about March 11 & 18, 2014, SPS sent notice of receipt of the letter of authorization and acknowledged SRG's representation of Plaintiff.

65. On or about March 31, 2014, Plaintiff received an advertisement from a Foreclosure Defense company informing her of her sale date. However, Plaintiff never received notice of this sale date from SPS.

66. On or about, April 10, 2014, SPS sent Plaintiff a letter informing her that it is willing to review for a modification and providing blank documents for her to submit. However, she had already submitted all of the documents to SPS in September and March.

67. On or about April 29, 2014, Plaintiff received a Notice of Postponement, dated April 25, 2014, informing her that her sale date had been postponed until June 10, 2014.

68. On or about April 2, 2014, SPS provided an inadequate response to Plaintiff's qualified written request.

69. On or about May 2, 2014, Plaintiff received a letter from SPS dated April 24, 2014, requesting additional documents that had previously been submitted.

70. Based on the HAMP eligibility requirements, Plaintiff qualified for HAMP and should have been reviewed for this modification. An analysis of the eligibility requirements is below:

- a. *Plaintiff obtained her mortgage prior to January 1, 2009; given the Deed of Trust and Note were executed and recorded in 2007.*
- b. *Plaintiff owes less than \$729,750 on his primary residence, given the principal loan amount was only \$568,000 and the principal balance owed as of January 2014 was \$563,970.37.*
- c. *Plaintiff's property has not been condemned, given there is no record of such with the Los Angeles County Recorder's Office.*
- d. *Plaintiff has experienced financial hardship, given she was unemployed for*

1 a period of time.

2 e. Plaintiff has sufficient documentation to support a modified payment; given
3 she has bank statements and tax returns showing sufficient income.

4 f. Lastly, Plaintiff has not been convicted of any of the 6 enumerated felonies
5 in connection with mortgage or real estate transactions that preclude
6 HAMP eligibility.

7 71. From about April 2014 until the present, all documents have been
8 submitted directly through Counsel and the bank, as agreed for the continuation of the
9 review of Plaintiff's loan modification.

10 72. On or about July 31, 2014, Plaintiff was denied a loan modification.
11 However, the income figures used were completely inaccurate, if not fabricated by SPS in
12 order to deny Plaintiff her right to a fair review. Plaintiff appealed the denial on this
13 basis and is currently under review.

14 **FIRST CAUSE OF ACTION FOR PREDATORY LENDING & OTHER**
15 **LENDING VIOLATIONS**
16 **(AGAINST CHASE)**

17 73. Plaintiff restates and reasserts each and every allegation set forth in in this
18 complaint as if fully set forth in this count.

19 74. Chase failed to remedy lending violations when Consumer Care Law Group
20 informed it of the many violations they believed were present. As the purported successor
21 in interest or assignee of the beneficial interest of Plaintiff's loan and/or the rights to
22 service the loan Chase had a duty to investigate the claims presented by Chase. Chase
23 failed to do so and it thus is liable for these violations which include: the loan terms were
24 misrepresented at the time of application, the income was inflated, the appraisal was
25 falsely inflated, signatures were forged, a notary was not present to witness Plaintiff's
26 signature, in addition to other concerns.

27 75. Chase's Liability: Chase is liable as a successor in interest to AMN.

28 76. Lending Violations: AMN made material misrepresentations through its
employee and/or agent to Plaintiff. It misrepresented the interest rate of the loan and her

1 income was grossly inflated. The representative stated she had a fixed interest rate.
 2 Plaintiff was then shocked when she saw her interest rate increase to almost 11% as to
 3 remaining at 6%. She in fact had a 5/1 Arm, so her interest rate would change every year
 4 after the first five years. She was never informed of this. Further, the loan application
 5 listed her income as \$12,300, which is grossly inaccurate. She worked at Staples at the
 6 time and earned about \$300 a week. Plaintiff has no idea where this income amount came
 7 from. Further, Plaintiff specifically requested a fixed interest rate. She purchased the
 8 home from a family member who was selling it because the interest rate continued to
 9 increase and she did not want to be in that same situation. She conveyed this information
 10 to AMN representatives. See *Exhibit 1: Uniform Residential Loan Application*

11 **SECOND CAUSE OF ACTION FOR VIOLATION OF CALIFORNIA**
 12 **CIVIL CODE §2924f**
 13 **(AGAINST CHASE)**

14 77. Plaintiff restates and reasserts each and every allegation set forth in in this
 15 complaint as if fully set forth in this count.

16 78. Pursuant to the law as written in 2012, Chase is in violation of the above
 17 listed statutes. Chase was informed of its violation when Consumer Care Law Group sent
 18 it a letter in November of 2012. Chase took no steps to remedy this violation and
 19 continued the same course of conduct.

20 79. Pursuant to California Civil Code §2924f(c)(3): "A copy of the notice of
 21 sale shall also be posted in a conspicuous place on the property to be sold at least 20 days
 22 before the date of sale, where possible and where not restricted for any reason. If the
 23 property is a single-family residence the posting shall be on a door of the residence."

24 80. In 2012, Michael Wallace Johnson, sent CHASA a letter informing it that it
 25 was in violation of this statute. In the letter, Michael wrote, "NOEMI PENALOZA was
 26 not served properly with trustee sales information 20 days prior to the foreclosure sale/
 27 auction date. Therefore the sale is out of compliance with California law. We need full
 28 cooperation to our request or a civil suit and complaint may ensue." *Exhibit 6: Letter to Chase about 2924f Violation.*

81. The notice of trustee sale was recorded November 16, 2012. The sale was scheduled for December 7, 2012. The notice of sale was posted to Plaintiff's door on December 7, 2012.

THIRD CAUSE OF ACTION FOR UNFAIR, FRAUDULENT BUSINESS PRACTICE

Violation of California Business & Professional Code §17200, et seq.

(AGAINST ALL DEFENDANTS)

82. Plaintiff restates and reasserts each and every allegation set forth in in this complaint as if fully set forth in this count.

83. Plaintiff is informed and believes and thereon alleges that the acts of Defendants as above alleged constitute unlawful deceit within the meaning of the term under California law, and therefore, among other reasons, violates *California Business & Professions Code §17200, et seq.* by committing unfair and/or fraudulent business practices.

84. *California Business & Professions Code §17200, et seq.* prohibits any "unlawful, unfair or fraudulent business act or practice"... A single act is actionable. The violations of *California Civil Code* described herein pled is an unfair business practices and at the same time forbidden by law. Such unfair practices offend established public policy and the practice is immoral, unethical, oppressive, unscrupulous and substantially injurious to consumers.

UCL Standing

85. UCL Standing requires, (1) injury in fact, (2) economic injury, and (3) a causal connection between economic injury and the alleged misconduct.

86. **Injury**: Plaintiff has been injured in fact because she has been threatened with loss of her home. She has suffered mental and emotional distress.

87. **Economic Injury**: She has incurred significant legal fees and costs. She has suffered negative reports on credit. She has been unable to qualify for other loans that could assist in resolving this conflict.

88. **Causal Connection**: if the misrepresentations were not made then Plaintiff

1 would not have executed the loan agreement. Further, if Chase had not misrepresented
 2 that it completed two reviews then Plaintiff could have actually been reviewed. Had this
 3 conduct not been perpetrated by Defendants then she would not have suffered negatives
 4 to her credit and incurred late fees.

5 **Predicate Violation: Statutory Violations, Intentional & Negligent Misrepresentation**

6 ***Statutory Violations***

7 89. Plaintiff hereby includes all of the statutory violations committed by
 8 Defendants and pled in this complaint as predicate violations under the UCL.

9 ***Intentional Misrepresentation***

10 90. **Misrepresentation:** Chase represented to Plaintiff that her application was
 11 complete and under review.

- 12 a. Who made the representation: Chase representative Denise
- 13 b. Authority to Speak: Denise represented that she had either express, implied,
 14 or apparent authority to speak.
- 15 c. How or by what means was the representation made: over the phone.
- 16 d. When was the representation made: On or about April 16, 2013, and April
 17 26, 2014.
- 18 e. Where was the representation made: Consumer Care Law Group's Place of
 19 business and Chase's Place of Business (loss mitigation call center).
- 20 f. To whom was the representation made: Plaintiff's representatives Iris and
 21 Liz Gomez from Consumer Law Group.

22 91. **False or Misleading Aspect of the Representation:** On May 3, 2013,
 23 Plaintiff's representative spoke with Chase representative Jennifer who stated the file is
 24 currently in foreclosure and as of April 12, 2014, the loan modification was denied
 25 because it was purportedly missing form 4506T. Jennifer then advised Plaintiff's
 26 representative that a new application must be submitted with a complete package before
 27 the file can be open for review. The statement made on April 16, 2014, was false or this
 28 latter statement was false.

92. **Materiality of the false representation:** this was material because Plaintiff

1 and her representative relied on this statement. Had they been informed that any
2 documents were missing they would have been promptly submitted in order to have a
3 complete package and be thoroughly reviewed.

4 93. **Misrepresentation:** Northeast Financial represented to Plaintiff that she
5 would have a fixed interest rate and it listed an inflated monthly income of \$13,200.00 .

6 a. Who made the representation: Northeast Financial representative Joe
7 Elizondo

8 b. Authority to Speak: The agent represented that he had either express,
9 implied, or apparent authority to speak.

10 c. How or by what means was the representation made: In person and in
11 writing.

12 d. When was the representation made: In or about January 2007.

13 e. Where was the representation made: Plaintiff believes at Northeast
14 Financials' Place of business located at 1108 East Colorado Street, Los
15 Angeles, CA 90041.

16 f. To whom was the representation made: to Plaintiff.

17 94. **False or Misleading Aspect of the Representation:** These representations
18 were false because Plaintiff only made \$300 a week at Staples and the loan agreement
19 stated the interest rate would increase every year after the first five years.

20 95. **Materiality of the false representation:** these representations were
21 material because Plaintiff relied on them. Had she been informed that any documents that
22 the interest rate was in fact not fixed but would change annually and that they used an
23 inflated income on the application then she would not have executed the agreement
24 because she would have known she would be unable to afford the loan.

25 *Negligent Misrepresentation*

26 96. **Misrepresentation of Material Fact:** The above described representations
27 were material because they concerned the monthly payment amounts due under the loan
28 agreement as well as the results of her loan modification. Specifically, the representations
were that her interest rate would be fixed, when in fact it increased from 6% to 11%, that
her monthly income was \$12,300, and that her loan modification was still under review

when in fact they had purportedly already declined it.

97. **No Reasonable Ground for Believing Representation to be True:**

Defendant knew the loan documents actually said contradicting information as they were the drafting party and Defendant had all the necessary information to provide the update already in their system. Further, Defendant knew her income was not as it had listed based on the documentation she provided them.

98. **Intent that Plaintiff Rely:** Defendant intended that Plaintiff rely on the executed agreement because they willing entered into it with Plaintiff and the payments were presented to Plaintiff as an amount that she could afford. Defendant further intended Plaintiff rely on its representations because they were the party with greater information and had an advantage over Plaintiffs.

99. **Justifiable Reliance:** Plaintiff was justified in her reliance on the representative's statement that her interest rate would be fixed as Defendant entered into the agreement with her. Plaintiff was further justified in her reliance because Defendant was the sole party with the information as to the status of the loan modification.

FOURTH CAUSE OF ACTION FOR BREACH OF CONTRACT
(AGAINST ALL DEFENDANTS)

100. Plaintiff restates and reasserts each and every allegation set forth in in this complaint as if fully set forth in this count.

Breach of Contract

101. A claim for breach of contract requires that a plaintiff plead: (1) the existence of a contract, (2) a breach of the contract by defendant, (3) performance or excuse of non-performance on behalf of the plaintiff, and (4) damages suffered by the plaintiff as a result of the defendant's breach.

102. **Contract:** The subject mortgage loan, comprised of the subject Promissory Note and subject Deed of Trust, constituted a contract between Plaintiff and AMN, and its purported successors. *See Exhibit 2: Deed of Trust*

103. **Breach 1:** Pursuant to Paragraph 20 of the subject Deed of Trust, "If there is a change of the Loan Servicer, Borrower shall be given written notice of the change

1 which will state the name and address of the new Loan Servicer, the address to which any
2 payments should be made, and any other information RESPA requires in connection with
3 a notice of transfer of servicing.”

4 104. Plaintiff was never sent any written notice of change of loan servicer.
5 Accordingly, the information required by the subject Deed of Trust could not have been
6 included in any purported notice.

7 105. Plaintiff is informed and believes and thereon alleges that the loan was first
8 assigned to another servicer prior to the date that Plaintiff’s last mortgage payment was
9 accepted.

10 106. In February of 2007, Plaintiff’s loan was with AMN. Sometime between
11 2007 and 2011, the servicing rights were purportedly transferred to Chase and who
12 knows what other entities. Plaintiff has not received any information about these transfers
13 and sent SPS a qualified written request to acquire this information, yet did not receive it
14 in SPS’s response.

15 107. **Breach 2 & 3**: Pursuant to Paragraph 22 of the Deed of Trust, “Lender
16 shall give notice to Borrower prior to acceleration following Borrower’s breach of any
17 covenant or agreement in this Security Instrument[.]” The provision continues, stating
18 that: “The Notice shall specify (a) the default; (b) the action required to cure the default;
19 (c) a date not less than 30 days from the date the notice is given to Borrower, by which
20 the default must be cured; and (d) that failure to cure the default on or before the date
21 specified in the notice may result in acceleration of the sums secured by this Security
22 Instrument and sale of the Property. The notice shall further inform Borrower of the right
23 to reinstate after acceleration and *the right to bring a court action to assert the non-*
24 *existence of a default or any other defense* of Borrower to acceleration and sale.”
(emphasis added).

25 108. The Notice of Defaults failed to include this material statement that AMN,
26 and its successors, agreed to make therein. The “right to bring a court action” was
27 significant consideration in entering this agreement. This material omission constituted a
28 breach of the agreement. The notice also failed to provide the date the alleged default
must be cured and that failure to cure could result in acceleration. These breaches

1 occurred on or about the dates the notices were recorded which were 6/13/2011 and
2 7/26/2012.

3 109. **Performance:** By making payments on the subject loan, Plaintiff has
4 performed her obligation under the promissory note. In Plaintiff's qualified written
5 request to SPS she requested a printout of all of the amounts paid and this was not
6 provided.

7 110. **Excuse for Non-Performance:** Plaintiff is excused from further
8 performance on the contract as of the date of these breaches. The first breach occurred
9 between 2007 and 2011. The latter breaches occurred 7/26/2012 and 6/13/2011, the dates
10 of the recording of the notice of default. Plaintiff was therefore excused from
11 performance on or before 6/13/2011. Plaintiff discontinued performance in or about
12 2011.

13 111. **Damages:** As a result of Defendants' breach, Plaintiff has suffered injuries
14 and has been caused to suffer the threat of loss of their home. Moreover, Defendants
15 induced Plaintiff to forbear from challenging the alleged default contained in the Notice
16 of Default or to defenses to foreclosure at that time. Plaintiff has incurred, and continues
17 to incur legal fees, including attorney fees and costs, as well as expenses to right this
18 wrong. Plaintiff has also suffered negative reports to her credit.

19 **Breach of Implied Covenant of Good Faith & Fair Dealing**

20 112. Every contract also contains an implied covenant of good faith and fair
21 dealing that neither party will do anything which will injure the right of the other to
22 receive the benefits of the agreement. Defendants have breached th

23 113. The elements of the tortious breach of the implied covenant of good faith
24 and fair dealing which a plaintiff should prove are: (1) assertion of a right or denial of an
25 obligation (2) made in bad faith (with actual knowledge that the claim or denial has no
26 foundation) and unreasonably (where a reasonable person under the circumstances would
27 find the claim or denial groundless) (3) that obstructs the injured party's ability to receive
28 the substitutionary value of the agreement.

114. **Assertion of a Right:** Plaintiff asserted her right to be reviewed for a loan
modification as required under the homeowner bill of rights and codified in California

1 Civil Code §§2920 et seq. This right was asserted when she submitted the application
2 packages to Defendants. Pursuant to CCC §2923.6(g), a borrower must be “afforded a
3 fair opportunity to be evaluated for a first lien loan modification.”

4 115. **Bad Faith Denial of an Obligation:** In bad faith Chase declined to review
5 Plaintiff for a loan modification alleging it had completed reviews when it knew those
6 statements were entirely false. Chase had actual knowledge that these statements were
7 false because its representatives has access to Plaintiff’s files and could clearly see a
8 complete review had not been completed.

9 116. **Obstruction of Ability to Receive Value of Agreement:** This action by
10 Chase obstructed Plaintiff’s right to receive a fair review as required under the statute.
11 Plaintiff only seeks to maintain possession of her home and provide Defendant with any
12 monies that are purportedly owed.

13 **Tortious Breach of Contract**

14 117. A contractual obligation may create a legal duty and the breach of that duty
15 may support an action in tort. Conduct amounting to a breach of contract becomes
16 tortious only when it also violates a duty independent of the contract arising from
17 principles of tort law. Tort damages have been permitted in contract cases where the
18 contract was fraudulently induced. The duty that gives rise to tort liability is either
19 completely independent of the contract or arises from conduct which is both intentional
20 and intended to harm.

21 118. A tortious breach of contract may be found when (1) the breach is
22 accompanied by a traditional common law tort, such as fraud or conversion; (2) the
23 means used to breach the contract are tortious, involving deceit or undue coercion or; (3)
24 one party intentionally breaches the contract intending or knowing that such a breach will
25 cause severe, unmitigable harm in the form of mental anguish, personal hardship, or
26 substantial consequential damages.

27 119. Chase committed fraud by making material misrepresentations to Plaintiff
28 and breaching the agreement. Chase used deceit by misstating facts as to the status of her
loan application and stating that it had reviewed her completely when it had not. Chase
knew its breaches and its bad faith could cause severe harm to Plaintiff because her home

1 was in jeopardy along with her credit. This has caused great personal hardship to her due
2 to legal expenses and costs and Chase should be held responsible for these damages.

3
4 **FIFTH CAUSE OF ACTION FOR QUIET TITLE**
5 **(AGAINST ALL DEFENDANTS)**

6 120. Plaintiff restates and reasserts each and every allegation set forth in in this
7 complaint as if fully set forth in this count.

8 121. Plaintiff seeks to Quiet Title against the claims on the subject property of
9 all Defendants, including Doe Defendants, inclusive. Defendants' claims are without any
10 right, and Defendants have no right, title, estate, lien or interest in the subject property.

11 122. Plaintiff name as Defendants in this count all persons unknown, claiming
12 (a) any legal or equitable right, title, estate, lien or interest in the subject property adverse
13 to Plaintiff' title, or (b) any cloud on Plaintiff' title to the subject property. The claims of
14 each unknown Defendant are without any right, and these Defendants have no estate,
15 right, title, lien or interest in the subject property.

16 123. Plaintiff's claim for Quiet Title is based upon the facts set forth above
17 which allegations are incorporated herein by this reference and facts stated below.

18 124. Defendants have no enforceable estate, right, title, lien or interest in the
19 subject property.

20 125. The only right Defendants have in Plaintiff's PROPERTY, if any, is an
21 unenforceable contract that is no longer tied to an obligation to enforce its contractual
22 terms over. AMN failed to transfer an enforceable beneficial interest in the Deed of Trust
23 to Defendants because it maintained interest in the Note, it failed to negotiate the loan or
24 the Note, and it lacked the capacity to negotiate the Note because it did not have an entire
25 interest in the Note per UCC 203(d), given the Intangible Interest in the Note had already
26 been transferred to multiple classes of a securitized Trust.

27 126. The only right Defendants possess, if any, is an unenforceable right in the
28 Note because it does not have the entire interest in the Note. Further, ownership of the
Intangible Interest cannot be rejoined with the Note and Deed of Trust because the
multiple classes have not been named as payee and the classes of the Trust, its officers,

1 and its agents are prohibited from accepting assets on behalf of the Trust after the Trust's
2 closing date, which was September 3, 2004.

3 127. Plaintiff has been thereby damaged, and has a substantial ascertainable loss.
4 Plaintiff desire, and are entitled to a judicial declaration quieting title in and to the subject
5 property.

6 **SIXTH CAUSE OF ACTION FOR VIOLATION OF REAL ESTATE**

7 **SETTLEMENT PROCEDURES ACT**

8 **(AGAINST ALL DEFENDANTS)**

9 128. Plaintiff restates and reasserts each and every allegation set forth in in this
10 complaint as if fully set forth in this count.

11 129. On multiple occasions Plaintiff submitted qualified written requests to
12 Chase and SPS through Consumer Law Care Group and The Law Office of Stephen R.
13 Golden & Associates. The duties of **Chase and SPS** under 12 U.S.C. §2605 Title 12,
Chapter 27 Section (e) in response to a RESPA letter are as follows:

14 130. On November 15, 2012, Plaintiff submitted a qualified written request to
15 Chase and on December 4, 2012, Chase sent Plaintiff a response from Chase to her
16 qualified written request.

17 131. On February 3, 2014, Plaintiff submitted a qualified written request to SPS
18 and on April 2, 2014 SPS sent Plaintiff a response.

19 132. RESPA requires that once a borrower makes a QWR, loan servicing
20 companies must: (a) provide written notice to the borrower acknowledging receipt of the
21 request; (b) take appropriate action with respect to the inquiry either by making
22 corrections or providing a written explanation or clarification; and (c) protect the
23 borrower's credit rating by not reporting to credit bureaus the overdue payments relating
24 to the request for 60 days after receiving the request. *Hutchinson v. Del. Sav. Bank*
25 *FSB*, 410 F. Supp. 2d 374, 382 (D.N.J. 2006); *see also*, 12 U.S.C. § 2605(e) (delineating
26 the duties of loan servicers to respond to borrower inquiries). "Whoever fails to comply
27 with any provision of this section shall be liable to the borrower for . . . (A) any actual
28 damages to the borrower as a result of the failure; and (B) any additional damages . . . in
the case of a pattern or practice of noncompliance with the requirements of this section . .

1 . ." 12 U.S.C. § 2605(f)(1). *Hawkins v. Homecomings Fin., LLC*, 2010 U.S. Dist. LEXIS
2 50014 (C.D. Cal. Apr. 26, 2010).

3 133. RESPA places a duty on loan servicers to respond to certain inquiries from
4 borrowers about their loan. *See* 12 U.S.C. § 2605(e). This duty is triggered when the
5 servicer receives a "qualified written request" ("QWR") from a borrower. 12 U.S.C. §
6 2605(e)(1)(A). A QWR is defined as a "written request from the borrower (or an agent of
7 the borrower) for information relating to the servicing of [the borrower's] loan." 12
8 U.S.C. § 2605(e)(1)(A).

9 134. Plaintiffs' RESPA claim does not fail if: it alleges to whom specifically
10 Plaintiff sent the QWRs, how Defendants failed to adequately respond, the content of the
11 QWRs, that the QWRs sought information related to the servicing of their loan, and that
12 the failure to respond directly and proximately caused actual pecuniary damage. *See, e.g.,*
13 *Hawkins v. Homecomings Fin., LLC*, 2010 WL 546372, at*3-4 (C.D. Cal. Feb. 8, 2010).
14 *See Exhibit 3: 12 U.S.C. §2605(e)-(f).*

15 LEGAL CORRESPONDENCE WAS A QUALIFIED WRITTEN REQUEST

16 135. Plaintiff alleges that the correspondences she sent were qualified written
17 requests pursuant to 12 U.S.C. §2605(e)(1)(B).

18 136. Under 12 U.S.C. §2605(e)(1)(B) , "written correspondence, other than
19 notice on a payment coupon or other payment medium supplied by the servicer, that—
20 (i) includes, or otherwise enables the servicer to identify, the name and account of the
21 borrower; and (ii) includes a statement of the reasons for the belief of the borrower, to the
22 extent applicable, that the account is in error or provides sufficient detail to the servicer
23 regarding other information sought by the borrower."

24 137. Plaintiffs' satisfied the requirements of 12 U.S.C. §2605(e)(1)(B) because
25 their QWRs included: (1) information to identify themselves, such as their loan number,
26 their names, and their property address, and (2) sufficient detail of the information
27 sought, Plaintiffs listed specific documents they wanted to receive such as the Deed of
28 Trust, the Note, and any Notices of Foreclosure or Sales, in addition to other documents.
*See Exhibit 4: Qualified Written Request- Sent to Chase and Exhibit 5: Qualified Written
Request- Sent to SPS.*

WHOM QUALIFIED WRITTEN REQUEST SENT TO

138. Plaintiff alleges that the qualified written requests were sent to Chase & SPS.

WHEN QUALIFIED WRITTEN REQUEST SENT AND RECEIVED

139. The QWRs were sent on November 15, 2012 and December 5, 2012. The QWR sent to SPS was received on the same day it was sent. See the last page of *Exhibit 5*, which is a fax confirmation showing the date and time it was sent and that it was transmitted. The QWR sent to Chase was received by Chase on or before December 4, 2012, which is the date of their response. Further they reference receipt of the QWR.

CONTENT OF THE QUALIFIED WRITTEN REQUEST

140. The content of Qualified Written Request can be seen in the following exhibits. See *Exhibits 4 and 5*.

SERVICE RELATED QUESTIONS IN THE QUALIFIED WRITTEN REQUEST

141. As seen in the *Exhibit 5* the qualified written requests did in fact seek information relating to the servicing of Plaintiff's loan because page 7 of the QWR requested information about servicing systems and on pages 14 through 16 there is an entire section listing 24 service related questions.

142. Further, *Exhibit 4* also list service related questions on pages 9, 17, 18, and 19.

DEFENDANTS' BREACH

143. Defendants failed to provide confirmation of receipt within 5 days as required by 12 U.S.C. §2605(e)(1)(A). Defendants have also failed to provide Plaintiffs with a written explanation of why they believe the account of the borrowers is correct in violation of 12 U.S.C. §2605(e)(1)(B). Further Defendant has failed to provide the information requested by the borrowers and/or an explanation of why the information is unavailable in violation of 12 U.S.C. §2605(e)(1)(C). Lastly, Defendants failed to cure the breach once they became aware in violation of 12 U.S.C. §2605(f)(4) because they became aware of the breach either on or before the filing of the initial complaint. See *Exhibit 3: 12 U.S.C. §2605(e)-(f)*.

DAMAGES & COSTS

1 144. In *Hutchinson v. Del.Sav. Bank FSB*, the court “h[e]ld that Plaintiffs have
 2 sufficiently pled actual damages resulting from the breach of RESPA duties. Aurora
 3 allegedly reported Plaintiff's delinquent Loan Two payments to credit bureaus during the
 4 60 day statutory period after it received Plaintiffs' qualified written request. As a result of
 5 these negative reports, Plaintiffs allege that they suffered "negative credit ratings on their
 6 credit reports [and] the inability to obtain and borrow another mortgage loan and other
 7 financing." (Amend. Compl. at P89) Thus Plaintiffs' inability to obtain further financing
 8 allegedly flowed directly from Aurora's breach of its duty under 12 U.S.C. § 2605(e)(3)
 9 to refrain from reporting the late payments to credit bureaus. As the court in *Cortez* held,
 10 "denial of credit because of the reporting of [delinquent charges] to credit reporting
 11 agencies" can sustain a claim of actual damages under RESPA. *Cortez*, 2000 U.S. Dist.
 12 LEXIS 5705 at *39-40. Accordingly, Aurora's motion to dismiss the RESPA claim will
 be denied.” *Hutchinson v. Del. Sav. Bank FSB*, 410 F. Supp. 2d 374, 383 (D.N.J. 2006).

13 145. The court further noted, “It is unclear whether "actual damages" under
 14 RESPA encompasses emotional distress. The district courts are split and no Court of
 15 Appeals has addressed the issue. *See, e.g., Johnstone v. Bank of America, N.A.*, 173 F.
 16 Supp. 2d 809, 814-16 (N.D. Ill. 2001)(concluding that RESPA plaintiffs may recover for
 17 mental suffering); *Ploog v. Homeside Lending, Inc.*, 209 F. Supp. 2d 863, 870 (N.D. Ill.
 18 2002) (following *Johnstone*); *Rawlings v. Dovenmuehle Mortgage, Inc.*, 64 F. Supp. 2d
 19 1156, 1166 (M.D. Ala. 1999) ("actual damages' [under RESPA] . . . encompass mental
 20 anguish damages."); *contra Katz v. Dime Savings Bank, FSB*, 992 F. Supp. 250, 255-56
 21 (W.D.N.Y. 1997) (concluding that Congress did not intend actual damages to encompass
 22 emotional distress); *In re Tomasevic*, 273 B.R. 682, 687 (M.D. Fla. 2002)("Actual
 23 damages are limited to economic pecuniary injury.")(following *Katz*); *see*
 24 *generally* George S. Mahaffey, Jr., *A Product of Compromise: Why Non-Pecuniary*
 25 *Damages Should Not Be Recoverable under Section 2605 of the Real Estate Settlement*
 26 *Procedures Act*, 28 U. Dayton L. Rev. 1 (2002)(analyzing RESPA's legislative history
 27 and case law interpreting statute). Because we hold that Plaintiffs in this case have stated
 28 a claim under RESPA independent of their allegations of emotional distress, the Court
 declines to decide at this stage of the litigation whether Plaintiffs may recover damages

1 for emotional distress in addition to damages for pecuniary loss.” *Hutchinson v. Del. Sav.*
2 *Bank FSB*, 410 F. Supp. 2d 374, 383 (D.N.J. 2006)

3 146. Plaintiff alleges that she has suffered from negative reports on her credit that
4 have prevented her from obtaining and borrowing another mortgage loan and she has
5 been unable to pursue other financing options.

6 147. Plaintiff is informed, believes, and thereon alleges that Defendant reported
7 late or missing payments to credit agencies within the 60 day period post the submission
8 of the qualified written request in violation of 12 U.S.C. §2605(e)(3).

9 148. Plaintiff is informed, believes, and thereon alleges that Defendant failed to
10 timely pay the taxes and property insurance. *Reese v. JPMorgan Chase & Co.*, 686 F.
11 Supp. 2d 1291, 1305 (S.D. Fla. 2009).

12 149. Plaintiff has also incurred legal expenses in order to right the wrongs that
13 Defendants have committed. These amounts include a retainer fee, attorney hours, court
14 fees, and fees for service of process. The exact amounts of these costs can and will be
15 produced at the court’s request. Plaintiff has incurred these expenses for at least two
16 attorneys. Plaintiff is entitled to her actual damages pursuant to 12 U.S.C. §2605(f)(1)(A)
17 and to her costs and attorney’s fees in pursuing this action pursuant to 12 U.S.C.
§2605(f)(3).

18 150. Plaintiff has also suffered from emotional distress as a result of Defendants’
19 disregard for their rights and the law. *Johnstone v Bank of Am., N.A.* (2001, ND Ill) 173
20 F Supp 2d 809.

21 151. But for Defendants’ failure to comply with the RESPA requirements
22 Plaintiff would not have suffered these losses.

23 152. “Plaintiffs allege that they sent written requests to PNC for information
24 relating to the loans, and that PNC failed to take action with respect to these requests.
25 Compl. PP 148-157. PNC says that Plaintiffs’ RESPA claim fails because Plaintiffs have
26 failed to plead actual, pecuniary damages, which PNC says are an essential element of a
27 RESPA claim. This court is unpersuaded that actual, pecuniary damages must be
28 pled...The statute expressly requires the existence of damages caused by a mortgage
servicer's failure to take action; it does not expressly require allegations in a

pleading. Nonetheless, a number of courts have interpreted the statute as requiring a plaintiff to allege pecuniary damages to state a claim. A pleading requirement has the effect of limiting a RESPA claim to circumstances in which a plaintiff can show that a mortgage servicer's failure has caused actual harm. Although Plaintiffs do not allege details of how any RESPA violation caused them pecuniary loss, they do allege actual damages, saying they need discovery before stating the amount of loss caused by the violation. That is sufficient at this stage of the case [12(b)(6) Motion], even assuming RESPA includes a pleading requirement. Of course, if Plaintiffs are unable to show, in a summary judgment proceeding, actual damages resulting from the RESPA violations, they may find their RESPA claim at an end.” *Agustin v. PNC Fin. Servs. Group*, 707 F. Supp. 2d 1080, 1091-1092 (D. Haw. 2010). Plaintiffs need discovery before stating the amount of loss caused by the violation.

153. Therefore, Plaintiff has alleged actual damages, given she has listed the losses she has suffered and has stated she will need discovery in order to state the exact amount of the harm caused by Defendants’ failure to comply.

SEVENTH CAUSE OF ACTION FOR VIOLATION OF CIVIL CODE §§2923.6(c)

(ANTI-DUAL TRACKING)

(AGAINST SPS)

154. Plaintiff restates and reasserts each and every allegation set forth in in this complaint as if fully set forth in this count.

155. Civil Code §2923.6(c) prohibits a mortgage servicer from recording an **NOD** or **NOTS** while a complete loan modification application is pending. Plaintiff has applied for numerous loan modifications, but has never received a fair review. For the majority of her applications she has never received a written denial letter, which is why she simply resubmitted the loan modification. On two occasions she received a denial for a purported failure to submit documents. However, those documents were timely submitted and confirmation of their receipt has been obtained. For the last review, Plaintiff was denied because she is purportedly ineligible. However, this directly contradicts statements that SPS representatives have made and the information used for the review was inaccurate.

156. Between 2012 and 2013, Plaintiff’s monthly expenses, increased from

1 \$5,276.00 to \$8929.53. Between 2013 and 2014, Plaintiff's monthly expenses decreased
 2 from \$8929.53 to \$7317.95. This is a material change of circumstances. Although, this
 3 amount is higher than her expenses in 2012, her income increased significantly to offset
 4 this change. In 2012 her income was \$4,800.00. In 2013, it increased to \$10,519.29. In
 5 2014, it decreased to \$10,148.70. The increase in her income and the decrease in her
 6 expenses have enabled Plaintiff to be able to afford the monthly payments; however,
 7 Defendant has not completed a fair review of her file, which would show she qualifies for
 8 either a forbearance (a reinstatement with payment towards any arrears) or a permanent
 9 loan modification. Plaintiff notified SPS of this when it submitted a new loan
 10 modification package to SPS.

11 157. Plaintiff submitted a complete application for a first lien loan modification
 12 offered to SPS on August 19, 2013. Plaintiff submitted all additional requested
 13 documents as requested in September 2013. Plaintiff was denied in November of 2013
 14 and Plaintiff timely appealed this denial.

15 158. The Notice of Trustee Sale was recorded February 12, 2014. Plaintiff never
 16 received a written denial of her appeal. SPS has violated dual tracking.

17 159. SPS representative Jones affirmed that Plaintiff's file was still under active
 18 review.

19 160. As a direct and proximate result of Defendants' conduct, Plaintiff has
 20 incurred expenses in order to clear title to the **PROPERTY** including attorneys' fees and
 21 other time, effort and expense to have the sale-dates of the **PROPERTY** postponed. Had
 22 Defendants complied with the Anti-Dual Tracking provisions of the *Civil Code*, these
 23 expenses would have been unnecessary.

24 161. Moreover, these expenses are continuing, and Plaintiff will incur additional
 25 charges for such purpose until the cloud on Plaintiff's title to the **PROPERTY** has been
 26 removed. The amounts of future expenses and damages are not ascertainable at this time.

27 **EIGHTH CAUSE OF ACTION FOR VIOLATION OF CIVIL CODE §2924.10(a)**
 28 **(AGAINST SPS)**

The Defendants Violated The HBOR, *Civil Code* § 2924.10(a), Which Requires a

Written Acknowledgment of Receipt of a Lien Modification Application

162. Plaintiff restates and reasserts each and every allegation set forth in in this complaint as if fully set forth in this count.

163. California *Civil Code* § 2924.10(a) states in pertinent part:

"When a borrower submits a complete first lien modification application or any document in connection with a first lien modification application, the mortgage servicer shall provide written acknowledgement of the receipt of the documentation within five business days of receipt."

164. *Civil Code* § 2924.10(b) states that a loan mod is deemed "complete" when the borrower has supplied the mortgage servicer with all the documents required by the mortgage servicer with the reasonable timeframes specified by Servicer.

165. Here, the Plaintiff has submitted a complete -- "complete" because they submitted everything that Defendants requested of them -- loan modification application (at least once), but the Defendants, who are undeniably involved in a high volume of foreclosures, did not provide Plaintiff with any written confirmation. Not only that, but Defendants requested the same documents-more than once, evidently "misplacing" or "losing" these confidential financial and personal records.

166. On March 5, 2014, Plaintiff submitted a complete loan modification package to Defendant. On April 10, 2014, Defendant requested Plaintiff submit documents that she previously submitted to them. Defendant never provided an acknowledgment of receipt of her application within 5 days post her submission. Plaintiff knows the documents were received by Defendant, given the confirmation of the fax. Further Plaintiff received an acknowledgement of receipt of her letter of authorization, which was also sent directly to Char Cave at the same fax number(s) just two days earlier. See *Exhibit 7*: Faxes Sent to Char Cave 3/3/2014 & 3/5/2014

NINTH CAUSE OF ACTION FOR VIOLATION OF *CIVIL CODE* §2924(a)(5)

(AGAINST ALL DEFENDANTS)

The Defendants Violated The HBOR, *Civil Code* § 2924(a)(5), Which Requires Written

Notice of Sale Dates

1 167. Plaintiff restates and reasserts each and every allegation set forth in in this
2 complaint as if fully set forth in this count.

3 168. California *Civil Code* § 2924(a)(5), provides, in pertinent part:

4 “[W]henever a sale is postponed for a period of at least 10 business days
5 pursuant to Section 2924g, a mortgagee, beneficiary, or authorized agent shall
6 provide written notice to a borrower regarding the new sale date and time, within
7 five business days following the postponement.”

8 169. Even though Plaintiff was engaged in negotiations for modification with
9 Defendants, the Defendants nevertheless posted a foreclosure sale dates and continued
10 the foreclosure process.

11 170. The proposed sales of the Subject Property were pursuant to Section
12 2924g, which governs “[a]ll sales of property under the power of sale contained in any
13 deed of trust or mortgage . . .”

14 171. The postponements were for more than ten (10) days. However, Plaintiff
15 never received the property notice as required, if any.

16 172. Plaintiff never received notice from Defendant that her trustee sale
17 scheduled for February 12, 2014 was postponed. She received an advertisement on March
18 31, 2013 notating a trustee sale date of May 8, 2014. This is clearly more than 10
19 business days. Plaintiff has been prejudiced by Defendant’s negligent or willful failure to
20 comply with statutory guidelines.

21 173. In *Giannotta Properties*, the court found that there was not sufficient
22 prejudiceto set aside a foreclosure sale when the borrower was not given notice that the
23 foreclosure sale was postponed 6 hours. “Where the borrower received adequate notice of
24 the foreclosure sale, a slight procedural irregularity in the foreclosure process that does
25 not prejudice the borrower does not entitle the borrower to set aside the foreclosure.
26 *Knapp v. Doherty*, 123 Cal.App.4th 76, 20 Cal.Rptr.3d 1, 13-17 (2004).” *Giannotta*
27 *Properties, Inc. v. Barbaccia*, 146 Fed.Appx. 97, 99 (C.A.9 (Cal.),2005). This case
28 significantly differs from *Giannotta* in that the sale was postponed for months and
Plaintiff heard of the new sale date via an advertisement from an attorney. Other sale
dates Plaintiff had no knowledge of.

174. In *Knapp v. Doherty*, the court found that there was not sufficient prejudice to set aside the sale when the borrower was given premature notice. “Borrowers’ objection to the premature notice is, in effect, a criticism that the trustee provided *too much notice* of the sale. There is no evidence that they were prejudiced by the premature mailing of the notice.” *Knapp v. Doherty*, 123 Cal.App.4th 76, 96, 20 Cal.Rptr.3d 1, 16 (Cal.App. 6 Dist.,2004). This case is significantly different from *Knapp* in that Plaintiff was not given premature notice nor late notice. In fact, Plaintiff was not given any notice from Defendants of the sale dates.

175. The court in “*Residential Capital v. Cal-Western Reconveyance Corp.* (2003) 108 Cal.App.4th 807, 819, 822, 134 Cal.Rptr.2d 162 [the question is whether ‘there is a substantial defect in the statutory procedure that is prejudicial to the interests of the trustor and claimants.’” *Knapp v. Doherty*, 123 Cal.App.4th 76, 96, 20 Cal.Rptr.3d 1, 16 (Cal.App. 6 Dist.,2004). Defendants’ failure to comply with the statutory requirements did in fact prejudice Plaintiff’s interest in her property. Plaintiff was only able to mitigate substantial damages due to receipt of the advertisement. But for this advertisement, Plaintiff would not have been able to mitigate the immense damages she would have suffered.

176. “In one case, the Ninth Circuit rejected the borrower’s claim that a foreclosure conducted under California law was *95 invalid because notice of sale was sent to the wrong address. (See *Lehner v. United States* (9th Cir.1982) 685 F.2d 1187 (*Lehner*).) The court reasoned: “[T]he record reveals clearly that she [the borrower] knew the foreclosure sale was imminent. Her repeated efforts to delay the impending sale attest to her knowledge.... She makes no suggestion that the written notice would have supplied information not already known to her ... nor did she allege that she never received actual notice of the foreclosure sale. Her constitutional argument thus boils down to due process requiring the meaningless formality of written (rather than oral) notice. [¶] We refuse to elevate form over substance.” (*Id.* at pp. 1190–1191; see also *Crummer v. Whitehead* (1964) 230 Cal.App.2d 264, 267–268, 40 Cal.Rptr. 826 [borrower’s challenge to sale on basis that default notice not properly served on her attorney rejected, where attorney actually received the notice]). *Knapp v. Doherty*, 123

1 Cal.App.4th 76, 94-95, 20 Cal.Rptr.3d 1, 15 (Cal.App. 6 Dist.,2004)

2 177. In the case at bar, unlike in *Lehner v. US*, Plaintiff did not receive oral or
3 written notice of the sale dates from Defendant. Thus, Plaintiff lacked actual knowledge
4 of the impending sale. Plaintiff was pursuing remedies to modify her loan and cure any
5 purported arrears. Plaintiff has not been stalling foreclosure procedures and unlike in
6 *Lehner* neither Plaintiff nor her attorneys received actual notice of the sale.

7 178. Lastly, all of the cases here and previously presented are brought by
8 Plaintiffs seeking to rescind a sale that has already taken place. Of course, a higher
9 burden would be placed on a Plaintiff in that situation given the rights of third parties
10 could be abridged if the sale is rescinded. However, those issues just are not the present
11 in the instant case. There are no third parties to be concerned with. Defendants must be
12 held liable for their actions. They have failed to comply with the law and must be held
13 responsible for their actions. If Plaintiff had not received that advertisement and her home
14 had been sold the prejudice she would have suffered would be immense, especially given
15 she was under review for a loan modification.

16 WHEREFORE Plaintiff will as for the following for each Cause of Action
17 sustained:

- 18 1. For Compensatory Damages in an amount to be determined by proof at
19 trial.
- 20 2. For Special Damages in an amount to be determined by proof at trial.
- 21 3. For General Damages in an amount to be determined by proof at trial.
- 22 4. For Treble Damages in an amount to be determined by proof at trial.
- 23 5. For Punitive Damages as against the individual Defendants.
- 24 6. For Attorney's Fees and Costs of this action as provided in the controlling
25 agreement between the parties which is the Deed of Trust.
- 26 7. For Declaratory Relief, including a declaration that Plaintiff are the
27 prevailing party.
- 28 8. Injunction stating that Plaintiff are the rightful owner of the subject
property.

9. For any prejudgment or other interest according to law.
10. Any other and further relief that the Court considers just and proper.

Dated: August 25, 2014

STEPHEN R. GOLDEN & ASSOCIATES



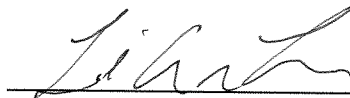
Te'Aira L. Law, Esq.
Attorneys for the Plaintiff
NOEMI PENALOZA

JURY DEMAND

Plaintiff demands a jury trial for all causes of action set forth herein.

Dated: August 25, 2014

STEPHEN R. GOLDEN & ASSOCIATES



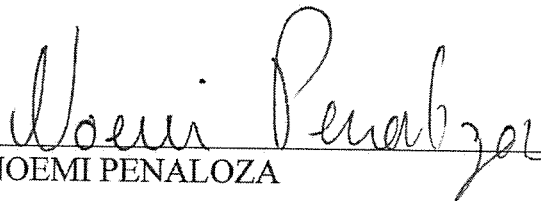
Te'Aira L. Law, Esq.
Attorneys for the Plaintiff
NOEMI PENALOZA

VERIFICATION

I, NOEMI PENALOZA, am a party to this action. I have read the foregoing Complaint and know its contents. The matters stated in it are true to the best of my own knowledge, except as to those matters which are stated on information, and belief, and as to those matters I believe them to be true.

I declare under penalty of perjury pursuant to the laws of the State of California that the foregoing is true and correct.

Dated: August 20, 2014


NOEMI PENALOZA

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the City and County of Los Angeles, California. I am over the age of 18 and not a party to the within action. My business address is 600 N. Rosemead Blvd, Suite 100, Pasadena, California 91107-2101.

On the date set forth below, I served the following document(s) described as:

SECOND AMENDED COMPLAINT

On the interested parties in this action by placing true copies thereof enclosed in sealed envelopes addressed as follows:

Attorney	Telephone/ Facsimile/Email	Party
Joseph Duffy, Esq. Joseph Quattrocchi, Esq. Morgan, Lewis, & Bockius LLP 300 S. Grand Avenue Twenty-Second Floor Los Angeles, CA 90071-3132	Tel: (213) 612-2500 Fax: (213) 612-2501 Email: jduffy@morganlewis.com jquattrocchi@morganlewis.com	Attorneys for Defendant JP Morgan Chase Bank, N.A.
Jonathan M. Zak, Esq. Gwen H. Ribar, Esq. James J. Ramos, Esq. Wright, Finlay, & Zak, LLP 4665 MacArthur Court, Suite 280 Newport Beach, CA 92660	Tel: (949) 477-5050 Fax: (949) 477-9200 Email: jzak@wrightlegal.net gribar@wrightlegal.net jramos@wrightlegal.net	Attorneys for Defendant Select Portfolio Servicing, Inc.

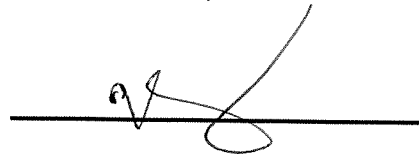
☒ (MAIL) I placed the envelope for collection and mailing, following our ordinary business practices. I am readily familiar with this firm's practice for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service, in a sealed envelope with postage fully prepaid. I am a resident or employed in the county where the mailing occurred. The envelope or package was placed in the mail at Los Angeles, California.

☒ (CM/ECF Electronic Filing) I caused the above document(s) to be transmitted to the office(s) of the addresses listed above by electronic mail at the email address(s) set forth above pursuant to Fed. R. Civ. P.5. (d)(1). "A Notice of Electronic Filing (NEF) is generated automatically by the ECF system upon completion of an electronic filing. The NEF, when e-mailed to the e-mail address of record in the case, shall constitute the proof of service as required by Fed. R. Civ.P.5.(d)(1). A copy of the NEF shall be attached to any document served in the traditional manner upon any party appearing pro se.

1 ☒ (Federal) I declare that I am employed in the office of a member of the Bar of this
2 Court at whose direction the service was made. I declare under penalty of perjury under
3 the laws of the United States of America that the above is true and correct.

4 Executed on August 25, 2014, at Pasadena, California.

5
6 Nohemi Gomez

A handwritten signature in black ink, appearing to read 'Nohemi Gomez', is written over a horizontal line. The signature is stylized with a large loop and a trailing flourish.

List of Exhibits

Exhibit 1: Uniform Residential Loan Application

Exhibit 2: Deed of Trust

Exhibit 3: 12 U.S.C. §2605(e)-(f).

Exhibit 4: Qualified Written Request- Sent to Chase

Exhibit 5: Qualified Written Request- Sent to SPS

Exhibit 6: Letter to Chase about 2924f Violation.

Exhibit 7: Faxes Sent to Char Cave 3/3/2014 & 3/5/2014

Exhibit 8: Letter to Chase re: failure to communicate